BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:	)	
SCOTT MATTHEW MARTIN, M.D.	)	Case No. 04-2013-234629
Physician's and Surgeon's Certificate No. A94122	)	
Respondent	)	

DECISION

The attached Stipulated Settlement and Disciplinary Order is hereby adopted as the Decision and Order of the Medical Board of California, Department of Consumer Affairs, State of California.

This Decision shall become effective at 5:00 p.m. on November 17, 2017.

IT IS SO ORDERED: October 20, 2017.

MEDICAL BOARD OF CALIFORNIA

Michelle Anne Bholat, M.D., Chair
Panel B

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
RANDALL R. MURPHY
Deputy Attorney General
State Bar No. 165851
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-2493
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: SCOTT MATTHEW MARTIN, M.D. 10 Isleworth Drive Henderson, NV 89052 Physician's and Surgeon's Certificate No. A94122, Respondent.	Case No. 04-2013-234629 OAH No. 2016110024 **STIPULATED SETTLEMENT AND DISCIPLINARY ORDER**

IT IS HEREBY STIPULATED AND AGREED by and between the parties to the above-entitled proceedings that the following matters are true:

PARTIES

1. Kimberly Kirchmeyer (Complainant) is the Executive Director of the Medical Board of California (Board). She brought this action solely in her official capacity and is represented in this matter by Xavier Becerra, Attorney General of the State of California, by Randall R. Murphy, Deputy Attorney General.

2. Respondent Scott Matthew Martin, M.D. (Respondent) is represented in this proceeding by attorney Michael J. Trotter, whose address is: 111 West Ocean Boulevard, 14th Floor, Long Beach, CA 90802.

3. On or about February 17, 2006, the Board issued Physician's and Surgeon's

Certificate No. A94122 to Scott Matthew Martin, M.D. (Respondent). That Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought in Accusation No. 04-2013-234629, and will expire on January 31, 2018, unless renewed.

JURISDICTION

4. Accusation No. 04-2013-234629 was filed before the Board, and is currently pending against Respondent. The Accusation and all other statutorily required documents were properly served on Respondent on August 23, 2016. Respondent timely filed his Notice of Defense contesting the Accusation.

5. A copy of Accusation No. 04-2013-234629 is attached as Exhibit A and incorporated herein by reference.

ADVISEMENT AND WAIVERS

6. Respondent has carefully read, fully discussed with counsel, and understands the charges and allegations in Accusation No. 04-2013-234629. Respondent has also carefully read, fully discussed with counsel, and understands the effects of this Stipulated Settlement and Disciplinary Order.

7. Respondent is fully aware of his legal rights in this matter, including the right to a hearing on the charges and allegations in the Accusation; the right to confront and cross-examine the witnesses against him; the right to present evidence and to testify on his own behalf; the right to the issuance of subpoenas to compel the attendance of witnesses and the production of documents; the right to reconsideration and court review of an adverse decision; and all other rights accorded by the California Administrative Procedure Act and other applicable laws.

8. Respondent voluntarily, knowingly, and intelligently waives and gives up each and every right set forth above.

CULPABILITY

9. Respondent does not contest that, at an administrative hearing, complainant could establish a *prima facie* case with respect to the charges and allegations contained in Accusation No. 04-2013-234629 and that he has thereby subjected his license to disciplinary action.

10. Respondent agrees that if he ever petitions for early termination or modification of probation, or if the Board ever petitions for revocation of probation, all of the charges and allegations contained in Accusation No. 04-2013-234629 shall be deemed true, correct and fully admitted by respondent for purposes of that proceeding or any other licensing proceeding involving respondent in the State of California.

11. Respondent agrees that his Physician's and Surgeon's Certificate is subject to discipline and he agrees to be bound by the Board's probationary terms as set forth in the Disciplinary Order below.

CONTINGENCY

12. This stipulation shall be subject to approval by the Medical Board of California. Respondent understands and agrees that counsel for Complainant and the staff of the Medical Board of California may communicate directly with the Board regarding this stipulation and settlement, without notice to or participation by Respondent or his counsel. By signing the stipulation, Respondent understands and agrees that he may not withdraw his agreement or seek to rescind the stipulation prior to the time the Board considers and acts upon it. If the Board fails to adopt this stipulation as its Decision and Order, the Stipulated Settlement and Disciplinary Order shall be of no force or effect, except for this paragraph, it shall be inadmissible in any legal action between the parties, and the Board shall not be disqualified from further action by having considered this matter.

13. The parties understand and agree that Portable Document Format (PDF) and facsimile copies of this Stipulated Settlement and Disciplinary Order, including PDF and facsimile signatures thereto, shall have the same force and effect as the originals.

14. In consideration of the foregoing admissions and stipulations, the parties agree that the Board may, without further notice or formal proceeding, issue and enter the following Disciplinary Order:

DISCIPLINARY ORDER

IT IS HEREBY ORDERED that Physician's and Surgeon's Certificate No. A94122 issued to Respondent Scott Matthew Martin, M.D. is revoked. However, the revocation is stayed and

Respondent is placed on probation for three (3) years on the following terms and conditions.

1. EDUCATION COURSE. Within 60 calendar days of the effective date of this Decision, and on an annual basis thereafter, Respondent shall submit to the Board or its designee for its prior approval educational program(s) or course(s) which shall not be less than 40 hours per year, for each year of probation. The educational program(s) or course(s) shall be aimed at correcting any areas of deficient practice or knowledge and shall be Category I certified. The educational program(s) or course(s) shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure. Following the completion of each course, the Board or its designee may administer an examination to test Respondent's knowledge of the course. Respondent shall provide proof of attendance for 65 hours of CME of which 40 hours were in satisfaction of this condition.

2. PRESCRIBING PRACTICES COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in prescribing practices approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The prescribing practices course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A prescribing practices course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

3. MEDICAL RECORD KEEPING COURSE. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a course in medical record keeping approved in advance by the Board or its designee. Respondent shall provide the approved course provider with any information and documents that the approved course provider may deem pertinent. Respondent shall participate in and successfully complete the classroom component of the course not later than six (6) months after Respondent's initial enrollment. Respondent shall successfully complete any other component of the course within one (1) year of enrollment. The medical record keeping course shall be at Respondent's expense and shall be in addition to the Continuing Medical Education (CME) requirements for renewal of licensure.

A medical record keeping course taken after the acts that gave rise to the charges in the Accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board or its designee, be accepted towards the fulfillment of this condition if the course would have been approved by the Board or its designee had the course been taken after the effective date of this Decision.

Respondent shall submit a certification of successful completion to the Board or its designee not later than 15 calendar days after successfully completing the course, or not later than 15 calendar days after the effective date of the Decision, whichever is later.

4. CLINICAL COMPETENCE ASSESSMENT PROGRAM. Within 60 calendar days of the effective date of this Decision, Respondent shall enroll in a clinical competence assessment program approved in advance by the Board or its designee. Respondent shall successfully complete the program not later than six (6) months after Respondent's initial enrollment unless the Board or its designee agrees in writing to an extension of that time.

The program shall consist of a comprehensive assessment of Respondent's physical and mental health and the six general domains of clinical competence as defined by the Accreditation Council on Graduate Medical Education and American Board of Medical Specialties pertaining to Respondent's current or intended area of practice. The program shall take into account data obtained from the pre-assessment, self-report forms and interview, and the Decision(s), Accusation(s), and any other information that the Board or its designee deems relevant. The

program shall require Respondent's on-site participation for a minimum of three (3) and no more than five (5) days as determined by the program for the assessment and clinical education evaluation. Respondent shall pay all expenses associated with the clinical competence assessment program.

At the end of the evaluation, the program will submit a report to the Board or its designee which unequivocally states whether the Respondent has demonstrated the ability to practice safely and independently. Based on Respondent's performance on the clinical competence assessment, the program will advise the Board or its designee of its recommendation(s) for the scope and length of any additional educational or clinical training, evaluation or treatment for any medical condition or psychological condition, or anything else affecting Respondent's practice of medicine. Respondent shall comply with the program's recommendations.

Determination as to whether Respondent successfully completed the clinical competence assessment program is solely within the program's jurisdiction.

If Respondent fails to enroll, participate in, or successfully complete the clinical competence assessment program within the designated time period, Respondent shall receive a notification from the Board or its designee to cease the practice of medicine within three (3) calendar days after being so notified. The Respondent shall not resume the practice of medicine until enrollment or participation in the outstanding portions of the clinical competence assessment program have been completed. If the Respondent did not successfully complete the clinical competence assessment program, the Respondent shall not resume the practice of medicine until a final decision has been rendered on the accusation and/or a petition to revoke probation. The cessation of practice shall not apply to the reduction of the probationary time period.

Within 60 days after Respondent has successfully completed the clinical competence assessment program, Respondent shall participate in a professional enhancement program approved in advance by the Board or its designee, which shall include quarterly chart review, semi-annual practice assessment, and semi-annual review of professional growth and education. Respondent shall participate in the professional enhancement program at Respondent's expense during the term of probation, or until the Board or its designee determines that further

participation is no longer necessary.

5. NOTIFICATION. Within seven (7) days of the effective date of this Decision, the Respondent shall provide a true copy of this Decision and Accusation to the Chief of Staff or the Chief Executive Officer at every hospital where privileges or membership are extended to Respondent, at any other facility where Respondent engages in the practice of medicine, including all physician and locum tenens registries or other similar agencies, and to the Chief Executive Officer at every insurance carrier which extends malpractice insurance coverage to Respondent. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in hospitals, other facilities or insurance carrier.

6. SUPERVISION OF PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE NURSES. During probation, Respondent is prohibited from supervising physician assistants and advanced practice nurses.

7. OBEY ALL LAWS. Respondent shall obey all federal, state and local laws, all rules governing the practice of medicine in California and remain in full compliance with any court ordered criminal probation, payments, and other orders.

8. QUARTERLY DECLARATIONS. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all the conditions of probation.

Respondent shall submit quarterly declarations not later than 10 calendar days after the end of the preceding quarter.

9. GENERAL PROBATION REQUIREMENTS.

Compliance with Probation Unit

Respondent shall comply with the Board's probation unit.

Address Changes

Respondent shall, at all times, keep the Board informed of Respondent's business and residence addresses, email address (if available), and telephone number. Changes of such addresses shall be immediately communicated in writing to the Board or its designee. Under no

circumstances shall a post office box serve as an address of record, except as allowed by Business and Professions Code section 2021(b).

Place of Practice

Respondent shall not engage in the practice of medicine in Respondent's or patient's place of residence, unless the patient resides in a skilled nursing facility or other similar licensed facility.

License Renewal

Respondent shall maintain a current and renewed California physician's and surgeon's license.

Travel or Residence Outside California

Respondent shall immediately inform the Board or its designee, in writing, of travel to any areas outside the jurisdiction of California which lasts, or is contemplated to last, more than thirty (30) calendar days.

In the event Respondent should leave the State of California to reside or to practice, Respondent shall notify the Board or its designee in writing 30 calendar days prior to the dates of departure and return. It is understood that Respondent is currently residing in Nevada at his address of record on file with the Board, and set forth in the caption of this Stipulated Settlement and Disciplinary Order.

10. INTERVIEW WITH THE BOARD OR ITS DESIGNEE. Respondent shall be available in person upon request for interviews either at Respondent's place of business or at the probation unit office, with or without prior notice throughout the term of probation.

11. NON-PRACTICE WHILE ON PROBATION. Respondent shall notify the Board or its designee in writing within 15 calendar days of any periods of non-practice lasting more than 30 calendar days and within 15 calendar days of Respondent's return to practice. Non-practice is defined as any period of time Respondent is not practicing medicine as defined in Business and Professions Code sections 2051 and 2052 for at least 40 hours in a calendar month in direct patient care, clinical activity or teaching, or other activity as approved by the Board. If Respondent resides in California and is considered to be in non-practice, Respondent shall

comply with all terms and conditions of probation. All time spent in an intensive training program which has been approved by the Board or its designee shall not be considered non-practice and does not relieve Respondent from complying with all the terms and conditions of probation. Practicing medicine in another state of the United States or Federal jurisdiction while on probation with the medical licensing authority of that state or jurisdiction shall not be considered non-practice. A Board-ordered suspension of practice shall not be considered as a period of non-practice.

In the event Respondent's period of non-practice while on probation exceeds 18 calendar months, Respondent shall successfully complete the Federation of State Medical Boards's Special Purpose Examination, or, at the Board's discretion, a clinical competence assessment program that meets the criteria of Condition 18 of the current version of the Board's "Manual of Model Disciplinary Orders and Disciplinary Guidelines" prior to resuming the practice of medicine.

Respondent's period of non-practice while on probation shall not exceed two (2) years.

Periods of non-practice will not apply to the reduction of the probationary term.

Periods of non-practice for a Respondent residing outside of California will relieve Respondent of the responsibility to comply with the probationary terms and conditions with the exception of this condition and the following terms and conditions of probation: Obey All Laws; General Probation Requirements; Quarterly Declarations; Abstain from the Use of Alcohol and/or Controlled Substances; and Biological Fluid Testing.

12. COMPLETION OF PROBATION. Respondent shall comply with all financial obligations (e.g., restitution, probation costs) not later than 120 calendar days prior to the completion of probation. Upon successful completion of probation, Respondent's certificate shall be fully restored.

13. VIOLATION OF PROBATION. Failure to fully comply with any term or condition of probation is a violation of probation. If Respondent violates probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If an Accusation, or Petition to Revoke Probation, or an Interim Suspension Order is filed against Respondent during probation, the

Board shall have continuing jurisdiction until the matter is final, and the period of probation shall be extended until the matter is final.

14. LICENSE SURRENDER. Following the effective date of this Decision, if Respondent ceases practicing due to retirement or health reasons or is otherwise unable to satisfy the terms and conditions of probation, Respondent may request to surrender his or her license. The Board reserves the right to evaluate Respondent's request and to exercise its discretion in determining whether or not to grant the request, or to take any other action deemed appropriate and reasonable under the circumstances. Upon formal acceptance of the surrender, Respondent shall within 15 calendar days deliver Respondent's wallet and wall certificate to the Board or its designee and Respondent shall no longer practice medicine. Respondent will no longer be subject to the terms and conditions of probation. If Respondent re-applies for a medical license, the application shall be treated as a petition for reinstatement of a revoked certificate.

15. PROBATION MONITORING COSTS. Respondent shall pay the costs associated with probation monitoring each and every year of probation, as designated by the Board, which may be adjusted on an annual basis. Such costs shall be payable to the Medical Board of California and delivered to the Board or its designee no later than January 31 of each calendar year.

ACCEPTANCE

I have carefully read the above Stipulated Settlement and Disciplinary Order and have fully discussed it with my attorney, Michael J. Trotter. I understand the stipulation and the effect it will have on my Physician's and Surgeon's Certificate. I enter into this Stipulated Settlement and Disciplinary Order voluntarily, knowingly, and intelligently, and agree to be bound by the Decision and Order of the Medical Board of California.

DATED: 07/20/2017

SCOTT MATTHEW MARTIN, M.D.
Respondent

I have read and fully discussed with Respondent SCOTT MATTHEW MARTIN, M.D. the terms and conditions and other matters contained in the above Stipulated Settlement and Disciplinary Order. I approve its form and content.

DATED: 8.7.17

~~MICHAEL J. TROTTER~~ JENNIFER L. STURGES
Attorney for Respondent

ENDORSEMENT

The foregoing Stipulated Settlement and Disciplinary Order is hereby respectfully submitted for consideration by the Medical Board of California.

Dated: 8-17-17

Respectfully submitted,

XAVIER BECERRA
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General

RANDALL R. MURPHY
Deputy Attorney General
Attorneys for Complainant

LA2016502039
62433127.docx

Exhibit A

Accusation No. 04-2013-234629

KAMALA D. HARRIS
Attorney General of California
JUDITH T. ALVARADO
Supervising Deputy Attorney General
TAN N. TRAN
Deputy Attorney General
State Bar No. 197775
California Department of Justice
300 So. Spring Street, Suite 1702
Los Angeles, CA 90013
Telephone: (213) 897-6793
Facsimile: (213) 897-9395
Attorneys for Complainant

BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against: **Scott Matthew Martin, M.D.** **2801 Via Tazzoli Court** **Henderson, NV 89052** **Physician's and Surgeon's Certificate No. A94122,** Respondent.	Case No. 04-2013-234629 **ACCUSATION**

Complainant alleges:

PARTIES

1. Kimberly Kirchmeyer (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs (Board).

2. On or about February 17, 2006, the Medical Board issued Physician's and Surgeon's Certificate Number A94122 to Scott Matthew Martin, M.D. (Respondent). The Physician's and Surgeon's Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on January 31, 2018, unless renewed.

///

///

JURISDICTION

3. This Accusation is brought before the Medical Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2004 of the Code states:

"The board shall have the responsibility for the following:

"(a) The enforcement of the disciplinary and criminal provisions of the Medical Practice Act.

"(b) The administration and hearing of disciplinary actions.

"(c) Carrying out disciplinary actions appropriate to findings made by a panel or an administrative law judge.

"(d) Suspending, revoking, or otherwise limiting certificates after the conclusion of disciplinary actions.

"(e) Reviewing the quality of medical practice carried out by physician and surgeon certificate holders under the jurisdiction of the board.

"(f) Approving undergraduate and graduate medical education programs.

"(g) Approving clinical clerkship and special programs and hospitals for the programs in subdivision (f).

"(h) Issuing licenses and certificates under the board's jurisdiction.

"(i) Administering the board's continuing medical education program."

5. Section 2227 of the Code provides that a licensee who is found guilty under the Medical Practice Act may have his or her license revoked, suspended for a period not to exceed one year, placed on probation and required to pay the costs of probation monitoring, or such other action taken in relation to discipline as the board deems proper.

6. Section 2234 of the Code, states:

"The board shall take action against any licensee who is charged with unprofessional conduct. In addition to other provisions of this article, unprofessional conduct includes, but is not limited to, the following:

"(a) Violating or attempting to violate, directly or indirectly, assisting in or abetting the violation of, or conspiring to violate any provision of this chapter.

"(b) Gross negligence.

"(c) Repeated negligent acts. To be repeated, there must be two or more negligent acts or omissions. An initial negligent act or omission followed by a separate and distinct departure from the applicable standard of care shall constitute repeated negligent acts.

"(1) An initial negligent diagnosis followed by an act or omission medically appropriate for that negligent diagnosis of the patient shall constitute a single negligent act.

"(2) When the standard of care requires a change in the diagnosis, act, or omission that constitutes the negligent act described in paragraph (1), including, but not limited to, a reevaluation of the diagnosis or a change in treatment, and the licensee's conduct departs from the applicable standard of care, each departure constitutes a separate and distinct breach of the standard of care.

"(d) Incompetence.

"(e) The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon.

"(f) Any action or conduct which would have warranted the denial of a certificate.

"(g) The practice of medicine from this state into another state or country without meeting the legal requirements of that state or country for the practice of medicine. Section 2314 shall not apply to this subdivision. This subdivision shall become operative upon the implementation of the proposed registration program described in Section 2052.5.

"(h) The repeated failure by a certificate holder, in the absence of good cause, to attend and participate in an interview by the board. This subdivision shall only apply to a certificate holder who is the subject of an investigation by the board."

///

///

///

///

7. Section 2241 of the Code states:

"(a) A physician and surgeon may prescribe, dispense, or administer prescription drugs, including prescription controlled substances, to an addict under his or her treatment for a purpose other than maintenance on, or detoxification from, prescription drugs or controlled substances.

"(b) A physician and surgeon may prescribe, dispense, or administer prescription drugs or prescription controlled substances to an addict for purposes of maintenance on, or detoxification from, prescription drugs or controlled substances only as set forth in subdivision (c) or in Sections 11215, 11217, 11217.5, 11218, 11219, and 11220 of the Health and Safety Code. Nothing in this subdivision shall authorize a physician and surgeon to prescribe, dispense, or administer dangerous drugs or controlled substances to a person he or she knows or reasonably believes is using or will use the drugs or substances for a nonmedical purpose.

"(c) Notwithstanding subdivision (a), prescription drugs or controlled substances may also be administered or applied by a physician and surgeon, or by a registered nurse acting under his or her instruction and supervision, under the following circumstances:

"(1) Emergency treatment of a patient whose addiction is complicated by the presence of incurable disease, acute accident, illness, or injury, or the infirmities attendant upon age.

"(2) Treatment of addicts in state-licensed institutions where the patient is kept under restraint and control, or in city or county jails or state prisons.

"(3) Treatment of addicts as provided for by Section 11217.5 of the Health and Safety Code.

"(d)(1) For purposes of this section and Section 2241.5, "addict" means a person whose actions are characterized by craving in combination with one or more of the following:

"(A) Impaired control over drug use.

"(B) Compulsive use.

"(C) Continued use despite harm.

"(2) Notwithstanding paragraph (1), a person whose drug-seeking behavior is primarily due to the inadequate control of pain is not an addict within the meaning of this section or Section 2241.5."

8. Section 2242 of the Code states:

"(a) Prescribing, dispensing, or furnishing dangerous drugs as defined in Section 4022 without an appropriate prior examination and a medical indication, constitutes unprofessional conduct.

"(b) No licensee shall be found to have committed unprofessional conduct within the meaning of this section if, at the time the drugs were prescribed, dispensed, or furnished, any of the following applies:

"(1) The licensee was a designated physician and surgeon or podiatrist serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and if the drugs were prescribed, dispensed, or furnished only as necessary to maintain the patient until the return of his or her practitioner, but in any case no longer than 72 hours.

"(2) The licensee transmitted the order for the drugs to a registered nurse or to a licensed vocational nurse in an inpatient facility, and if both of the following conditions exist:

"(A) The practitioner had consulted with the registered nurse or licensed vocational nurse who had reviewed the patient's records.

"(B) The practitioner was designated as the practitioner to serve in the absence of the patient's physician and surgeon or podiatrist, as the case may be.

"(3) The licensee was a designated practitioner serving in the absence of the patient's physician and surgeon or podiatrist, as the case may be, and was in possession of or had utilized the patient's records and ordered the renewal of a medically indicated prescription for an amount not exceeding the original prescription in strength or amount or for more than one refill.

"(4) The licensee was acting in accordance with Section 120582 of the Health and Safety Code."

9. Section 2266 of the Code states: AThe failure of a physician and surgeon to maintain adequate and accurate records relating to the provision of services to their patients constitutes unprofessional conduct."

///

///

10. Section 725 of the Code states:

"(a) Repeated acts of clearly excessive prescribing, furnishing, dispensing, or administering of drugs or treatment, repeated acts of clearly excessive use of diagnostic procedures, or repeated acts of clearly excessive use of diagnostic or treatment facilities as determined by the standard of the community of licensees is unprofessional conduct for a physician and surgeon, dentist, podiatrist, psychologist, physical therapist, chiropractor, optometrist, speech-language pathologist, or audiologist.

"(b) Any person who engages in repeated acts of clearly excessive prescribing or administering of drugs or treatment is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) nor more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days nor more than 180 days, or by both that fine and imprisonment.

"(c) A practitioner who has a medical basis for prescribing, furnishing, dispensing, or administering dangerous drugs or prescription controlled substances shall not be subject to disciplinary action or prosecution under this section.

"(d) No physician and surgeon shall be subject to disciplinary action pursuant to this section for treating intractable pain in compliance with Section 2241.5."

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence- 3 Patients)

11. Respondent is subject to disciplinary action under section 2234, subdivision (b), of the Code for the commission of acts or omissions involving gross negligence in the care and treatment of patients B.S., B.G. and A.D.[1] The circumstances are as follows:

Patient B.S.

12. B.S. (or "patient") was a 29-year-old male who treated with respondent from approximately March 2011 to September 2014.[2] The patient's chief complaint was persistent

[1] The patients are identified by initials to protect their privacy.

[2] Specifically, progress notes from March 7, 2011 through September 12, 2014, for this patient were available for review. However, CURES reports indicate that respondent may have treated this patient earlier, back in 2010 continuing through 2015.

neck pain following cervical fusion, and he also had Type I Diabetes. Per CURES, respondent prescribed to the patient controlled substances, namely Oxycodone, Nucynta, Diazepam, and Fentanyl, all of which are controlled substances with a high potential for addiction.

13. Prescription records indicate that respondent was prescribing controlled substances to this patient at least as early as October 2010, but there are no medical records to document respondent's treatment of the patient until March 2011. There is a one-page "History & Physical Report" dated March 7, 2011, and despite being labeled the first report, this is not an initial evaluation. The note does not contain any detail concerning the nature and extent of the patient's pain, and there is only a limited past history and a limited physical examination. There is no differential diagnosis. Treatment goals are unclear. The medical record is incomplete in regards to determining how respondent evaluated this patient prior to prescribing controlled substances for pain treatment.

14. There are approximately 25 follow-up visits during the time frame from April 28, 2011 through December 23, 2014. The reports are notable for their redundancy and lack of new information. Much information is carried forward and repeated in note after note.[3] There is limited information regarding the nature and extent of the pain, the treatment goals are unclear, and the reasoning for varying dosages of the pain medication is unclear.

15. During the time frame from October 2010 through December 2012, the patient filled 30 prescriptions for Oxycodone from respondent in quantities varying from 90 to 180 with an average of every 27 days. Respondent prescribed the patient Oxycodone in an average daily dose of 150 mg during this time period. The patient filled 22 prescriptions for transdermal Fentanyl from respondent during this period. Respondent also prescribed the patient Valium, and starting on December 2011, respondent prescribed the patient Cymbalta, which is an

[3] For example, the July 21, 2011 note indicates that the patient looked fatigued and "had hypoglycemic episode today." The same information is repeated in the progress notes of September 8, 2011, November 1, 2011, December 15, 2011, January 10, 2012, March 13, 2012, May 3, 2012, June 27, 2012, September 19, 2012, November 13, 2012, January 2, 2014, January 30, 2014, April 24, 2014, and May 20, 2014. If the patient did have a hypoglycemic episode during this time span of nearly three years, there should be records indicating that respondent was contacting the patient's endocrinologist.

antidepressant that has potential benefit in the treatment of chronic pain. However, the treatment goals for these medications are unclear, and the rationale for the dose adjustments is also not adequately described in the medical record.

16. Respondent did not document the patient's pain intensity in his follow-up treatment notes until March 13, 2012, and the functional benefits of the medicinal treatments are also not well documented. Throughout several years of treatment, there was little mention of respondent having checked the patient's blood pressure, despite the patient having diabetes and was being treated with high dose opioid analgesic therapy plus Valium. There was no documentation of laboratory testing within the medical chart, and there was no evidence for kidney or liver function testing to see whether the patient might have organ impairment that might require adjustment in the dosages of the pain medicine being prescribed.

17. Some of the notes are internally inconsistent with respect to the dosages of the medications, and many of the notes are inconsistent in terms of the medication dosages listed in the note and what respondent wrote on the prescription. There was no pain management agreement in the medical record, and no evidence for urine drug testing.

18. Taken altogether, Respondent's treatment of B.S. represents an extreme departure from the standard of care.

Patient B.G.

19. B.G. (or "patient") was a 37-year-old male who treated with respondent from approximately April 2011 to July 2011.[4] The records from this time period show that respondent's treatment of this patient consisted of prescribing to the patient controlled substances, specifically Oxymorphone, Oxycodone, and Alprazolam on a recurring basis plus single prescriptions for Tapentadol and Morphine.[5]

---

[4] The patient may have treated with respondent longer than this time period. Specifically, the progress notes available for review shows visits on April 6, 2011, May 29, 2011, July 4, 2011, and July 27, 2011. CURES, however, show that the respondent last prescribed controlled substances (Oxymorphone, Oxycodone, and Alprazolam) to the patient on May 18, 2012. The patient also died of a drug overdose on or about May 30, 2012, due to the combined effects of multiple drugs.

[5] Per the coroner's report, the patient had history of heroin abuse/addiction and was abusing his medications and alcohol.

20. On the initial visit which occurred on April 6, 2011, respondent described the patient as having "chronic lumbar back pain" but failed to provide more details regarding the nature and extent of the pain and the impact of the pain upon the patient's functioning except to note "pain all the time."

21. There is limited documentation concerning previous pain treatment efforts apart from listing the patient's medications, which included two opioids (Opana ER and Oxycodone), a benzodiazepine (Xanax), and an antidepressant/pain medication (Amitriptyline). Respondent referenced that the patient had seen other physicians, but there is no indication that respondent checked CURES to see if the other physicians were still prescribing the patient controlled substances.

22. The physical examination is limited, and the initial examination contains inadequate documentation of the nature and extent of the patient's pain. Respondent's documentation of his review of the patient's electrodiagnostic studies were also inconsistent. Respondent prescribed to the patient highly-addictive controlled substances such as Opana, Nucynta, Alprazolam (Xanax), but there is no medical indication relative to the prescription of Alprazolam.[6] The treatment goals are unclear and not well-documented. There is inadequate discussion relative to informed consent and no discussion of potential side effects or warnings associated with the use of controlled substances.

23. The documentation is deficient in regard to follow-up of the patient, and do not address prescription monitoring of the controlled substances. There is no documentation of whether the patient had any side effects from the medications, and no documentation of a treatment plan. None of the reports mention anything about the patient's response to the medications or to refilling the medication for the patient. There are no medical records after the July 27, 2011 visit, even though respondent continued to prescribe this patient controlled

[6] Respondent said in a Board interview that he made an effort to taper the patient's medications at the first visit, reducing the patient's dose of Alprazolam and switching him from Oxycodone to Tapentadol. According to the initial visit note, respondent reduced the patient's dose of Alprazolam from 6 mg daily to 2 mg daily, which is a substantial reduction and placed the patient at risk for having withdrawal symptoms.

substances after this date.[7] There was no urine testing and no reference to CURES in the medical record to indicate that respondent made efforts to ensure that the patient was not abusing drugs.

24. Taken altogether, Respondent's treatment of B.G. represents an extreme departure from the standard of care.

Patient A.D.

25. A.D. (or "patient") was a 35-year-old female who treated with respondent from approximately June 2009 to September 2009 in relation to chronic low back pain. Respondent treated this patient with opioid analgesic medication and a series of three lumbar epidural steroid injections. Due to her persistent pain, respondent made adjustments in her opioid analgesics, ultimately prescribing the patient Fentanyl patches.[8]

26. Respondent's initial examination of the patient was very limited. Documentation of informed consent is inadequate. There is inadequate documentation regarding the patient's history pertaining to the use of alcohol and drugs. Throughout his treatment of this patient, respondent wrote her multiple prescriptions for controlled substances, but the medical record does not reflect the vast majority of these prescriptions.

27. Per the CURES report, the patient filled a prescription from respondent for Darvocet on July 11, 2009, but the medical chart contains no documentation regarding this prescription. The CURES report also shows the patient filled prescriptions from respondent for Hydrocodone/Acetaminophen on July 18, 2009, July 23, 2009, July 27, 2009, and August 18, 2009, but the medical chart contains no documentation regarding these prescriptions. The CURES report also indicates that the patient filled prescriptions from respondent for Alprazolam on July 25, 2009, July 26, 2009, August 17, 2009, and September 1, 2009, but the medical chart contains no documentation regarding these prescriptions. The medical indication for this drug is

---

[7] Respondent claims that there should be more records for this patient, but that he [respondent] did not have them because he sold his practice in 2014.

[8] The patient died of an accidental drug overdose on September 2, 2009, within a week of starting Fentanyl in combination with Hydrocodone and Alprazolam. Per the coroner's report, the patient, at her death, had a prescription for Fentanyl patches 25 mg quantity 15, dated August 28, 2009, with only three patches remaining, though this was intended to have been a 30-day supply. The patient also had a history of alcohol and prescription medication abuse.

also unclear, because Aprazolam is not even mentioned in the medical chart until after the patient died. On the August 11, 2009 office visit, there is no indication that respondent prescribed to the patient any medications, yet CURES shows that the patient filled a prescription for Oxycodone/Acetaminophen from respondent on said date.

28. The patient had also received a prescription for Lortab on August 3, 2009 from her primary care physician (PCP), but respondent stated that he had not made any contact with the PCP and that he [respondent] was unaware that the patient was getting Lortab from her PCP.[9] In regard to respondent's prescribing to the patient opioid analgesics, respondent failed to adequately document the patient's response to taking the medications. Respondent also failed to adequately document whether the patient had any side effects from the drugs, and he failed to adequately document the treatment goals for the patient.

29. Taken altogether, Respondent's treatment of A.D. represents an extreme departure from the standard of care.

SECOND CAUSE FOR DISCIPLINE

(Repeated Negligent Acts- 3 Patients)

30. Respondent is subject to disciplinary action under section 2234, subdivision (c), of the Code in that he committed repeated negligent acts in his care of patients B.S., B.G., and A.D. The circumstances are as follows:

31. The facts and circumstances alleged in the First Cause for Discipline above, are incorporated by reference as if set forth in full herein.

THIRD CAUSE FOR DISCIPLINE

(Prescribing Without Exam/Indication)

32. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 2242 of the Code, in that Respondent

[9] Respondent affirmed that he had a pain management agreement with this patient stipulating that she would only receive controlled substances from him, though respondent admitted that the agreement is not contained in the patient's file.

prescribed dangerous drugs to patients B.S., B.G., and A.D. without an appropriate prior examination or medical indication therefor.

FOURTH CAUSE FOR DISCIPLINE

(Excessive Prescribing)

33. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 725 of the Code, in that Respondent excessively prescribed dangerous drugs to patients B.S., B.G., and A.D.

FIFTH CAUSE FOR DISCIPLINE

(Inadequate Records)

34. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 2266 of the Code, in that Respondent failed to maintain adequate and accurate records of his care and treatment of patients B.S., B.G., and A.D.

SIXTH CAUSE FOR DISCIPLINE

(Prescribing to an Addict)

35. By reason of the facts and allegations set forth in the First Cause for Discipline above, Respondent is subject to disciplinary action under section 2241 of the Code in that Respondent prescribed controlled substances to patients B.S., B.G., and A.D., who had signs of addiction.

PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Medical Board of California issue a decision:

1. Revoking or suspending Physician's and Surgeon's Certificate Number A94122, issued to Scott Matthew Martin, M.D.;

2. Revoking, suspending or denying approval of Scott Matthew Martin, M.D.'s authority to supervise physician assistants, pursuant to section 3527 of the Code;

3. Ordering Scott Matthew Martin, M.D., if placed on probation, to pay the Board the costs of probation monitoring; and

///

4. Taking such other and further action as deemed necessary and proper.

DATED: August 23, 2016

KIMBERLY KIRCHMEYER
Executive Director
Medical Board of California
Department of Consumer Affairs
State of California
Complainant

LA2016502039
62045128.doc